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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

CTI/141502

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 07, 2012, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee County Department of Human Services in regard to Child Care, a hearing was held on August 28, 2012, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely with respect to a notice of child care overissuance and whether the Department of Children and Families correctly sought to intercept the Petitioner's tax refund to collect an overpayment of childcare payments in the amounts of \$20,708.00 and \$18,645.00 for the periods of October 12, 2008 to August 31, 2009 and September 6, 2009 to July 31, 2010, respectively.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Second Floor  
Madison, Wisconsin 53703-2866

By: Tamika Terrell

Milwaukee County Department of Human Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a notice of child care overissuance dated August 19, 2011 that informed him that he was overpaid child care benefits in the amount of \$20,708.00 during the period from October 12, 2008 to August 31, 2009. That notice was sent to the correct address and did contain appeal instructions. Exhibit # 5.

3. Petitioner was sent a second notice of child care over issuance dated August 19, 2011 that informed him that he was overpaid child care benefits in the amount of \$18,645.00 during the period from September 6, 2009 to July 31, 2010. That notice was sent to the correct address and did contain appeal instructions. Exhibit #5.
4. Dunning notices were sent to Petitioner at the above address that were dated October 4, 2011, November 2, 2011 and April 3, 2012.
5. No appeal was filed with the Division of Hearings and Appeals to contest the over issuance notices described at Findings #s 2 and 3.
6. Petitioner was sent a notice of tax intercept dated May 11, 2012. Petitioner filed this appeal on June 7, 2012 to contest that tax intercept.
7. Petitioner's significant other is the case head and was separately sent all the notices described above. She did file an appeal with the Division of Hearings and Appeals of the original August 19, 2011 overpayment notices on November 14, 2011. A hearing was scheduled for those matters on February 23, 2012. There was no appearance. Those cases were dismissed on February 28, 2012. There was no rehearing request received by the Division of Hearings and Appeals. She also filed an appeal on June 7, 2012 to contest the tax intercept notice. That appeal was scheduled for hearing on September 7, 2012. She did not appear for that hearing on September 7, 2012 though she was at this hearing for Petitioner on August 28, 2012. Her appeal was dismissed by the Division of Hearings and Appeals on September 11, 2012. No rehearing request has been received by the Division of Hearings and Appeals following that dismissal.

### DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. An appeal for the child care program must be filed within 45 days of notice of adverse action. *Wisconsin Shares Child Care Assistance Manual (CCAM)*, §2.5.0.; also see *HA §3.04(3), Wis. Adm. Code*. Here there was no appeal filed by Petitioner to contest the original August 19, 2011 notices of child care over issuance. The June 7, 2012 appeal of the tax intercept is not timely with respect to the August 19, 2011 over issuance notification.

An appeal of a tax intercept must be made within 30 days of the notice. § 49.85(3)(a)2., *Stats*. Again, this appeal was filed on June 7, 2012 and is therefore timely with respect to the tax intercept but I also note that the appeal right with respect to tax intercepts is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

*Wis. Stat. §49.85(4)(b) (Emphasis added).*

Petitioner's significant other did appear with him at this hearing and , with Petitioner, wanted to contest the August 19, 2011 overpayment notices. The Division of Hearings and Appeals does not, however, have authority to make a determination on the merits of the original overpayments as Petitioner's appeal is untimely as to those notices. As for the tax intercept, though the appeal is timely, the department has limited the scope of the hearing to exclude the original overpayment issues. Thus there is no defense to the tax intercept notice.

### CONCLUSIONS OF LAW

1. That Petitioner's appeal is untimely as to the August 19, 2011 notices of overpayment.

2. That the notice of the intent to intercept Petitioner's income tax refund does not provide a new opportunity for a hearing on the merits of the child care overpayment claim where that issue could have been addressed at a prior hearing.
3. That the Department of Children and Families may certify the sums of \$20,708.00 and \$18,645.00 as amounts due, and may proceed with the action to intercept the Petitioner's income tax refund.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

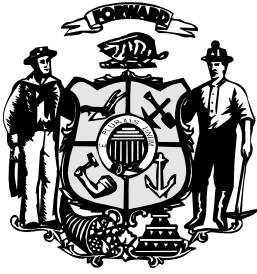
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin 53703-2866. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 8th day of October, 2012

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David D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals

c: Milwaukee County Department of Human Services - email  
Department of Children and Families - email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 8, 2012.

Milwaukee County Department of Human Services  
Public Assistance Collection Unit